

REMARKS

In the Office Action of September 9, 2003, dependent claim 36 was objected to as being dependent upon a rejected base claim, but which would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Pursuant to the above amendment, claim 1, the base claim of dependent claim 36 has been amended to incorporate the subject matter of dependent claim 36. Thus, claim 1 is now allowable. The Examiner's formal allowance of such claim is respectfully requested. With the allowance of claim 1 (which is the substance of dependent claim 36 written in independent form), the dependent claims which depend from claim 1, namely, claims 2-4, 8, 9, 12, 20 and 25, are also allowable.

Independent claim 26 has also been amended to incorporate the limitations of dependent claim 37. The subject matter added by dependent claim 37 to claim 26 is identical to the subject matter added by dependent claim 36 to independent claim 1. Thus, independent claim 26 as so amended is also considered to be allowable. Formal allowance is respectfully requested. With the allowance of independent claim 26, respective dependent claims 27-32 and 34 are also allowable.

Independent claim 38 has also been amended to incorporate the subject matter of claims 39 and 40.

It is submitted that all of the above amendments are proper after final rejection since they merely involve incorporating the subject matter dependent claims into their respective independent claims. Thus, they do not raise new issues. Rather, they involve essentially the cancellation of the broader independent claims.

With respect to amended claim 38, independent claim 38 and its respective dependent claims 39 and 40 were rejected in view of various prior art, namely the Dubois Patent No. 5,926,995, the North Patent No. 5,946,847, the Nohta Patent No. 4,744,169 and the Kechriotis Patent No. 6,510,646. Claim 38 as amended is patentably distinguishable from the above-identified patents for various reasons. First, claim 38 is directed to a "fishing sinker construction". In contrast, all of the above references are directed to a fishing lure or improvements in a fishing lure. Thus, a rejection under § 102 is improper. Further, fishing lures and fishing sinkers have entirely different functions: the lure to attract and catch fish and the sinker to merely weight the line so as to control the depth of the lure. Accordingly, a person

skilled in the art seeking improvements in a fishing sinker would look to the fishing sinker art, not the fishing lure art, for guidance. Thus, it would not be obvious to incorporate the structure of fishing lures into the structure of fishing sinkers.

Further, the Dubois patent is distinguishable from claim 38 amended because it does not sink in water. The Examiner suggests that it partially sinks. However, based on the disclosure of the present invention, this would be characterized as floating. An object either sinks or floats. The language in claim 38 is clear that it requires the weight to be sufficient to cause a fishing sinker to sink in water. Further, claim 38 requires the weighted material to be lead based. There is no disclosure of this type in *Dubois*.

The North patent is further distinguishable from claim 38 in that it is not “non-detachable” as required and is also not moulded into the weighted section as required by claim 38.

The Nochta patent is further distinguishable in that its body is not constructed of a lead-based material. In fact, Nochta shows a worm-type structure which is required to be constructed of a flexible material.

The Kechriotis patent is further distinguished from claim 38 in that the weighted material, to the extent it embodies the same, is not a lead-based material as required nor is the noise generating element molded into the weighted section. *Kechriotis* also does not disclose the noise generating element as being non-detachable and does not disclose a “fixed number” of noise generating elements contained within the chamber. In fact, *Kechriotis* shows no noise generating objects at all, but rather objects to vary the buoyancy of the fishing lure. Thus, there are not a “fixed number” of noise generating objects.

For all of the above reasons, applicant believes that the claims now in the case are allowable and such action is respectfully requested.

Respectfully submitted,

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